

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
MARIA CINTRON- FALCON,

Plaintiff,

VERIFIED COMPLAINT

Index No.:

-against-

THE CITY OF NEW YORK, THE NEW YORK CITY
POLICE DEPARTMENT, P.O. GALVIN FERGUSON
(Shield No. unknown), FLEET SERVICES DIVISION,
HUB TRUCK RENTAL CORP. AND CHARLES
SINGLETON,

Defendants.
-----X

Plaintiff, by her attorneys, BURNS & HARRIS, as and for a Verified Complaint herein,
respectfully sets forth and alleges:

AS AND FOR A FIRST CAUSE OF ACTION

1. That at all times hereinafter mentioned, the defendant THE CITY OF NEW YORK, was a municipal corporation duly existing under and by virtue of the laws of the State of New York.
2. That at all times hereinafter mentioned, the defendant THE CITY OF NEW YORK, was a corporation doing business in the State of New York.
3. That at all times hereinafter mentioned, the defendant THE CITY OF NEW YORK, was the owner of a certain New York City Police Department Ford motor vehicle bearing plate number 5414.
4. That at all times hereinafter mentioned, the defendant THE NEW YORK CITY

POLICE DEPARTMENT, was a municipal corporation duly existing under and by virtue of the laws of the State of New York.

5. That at all times hereinafter mentioned, the defendant THE NEW YORK CITY POLICE DEPARTMENT, was a corporation doing business in the State of New York.

6. That at all times hereinafter mentioned, the defendant THE NEW YORK CITY POLICE DEPARTMENT, was the owner of a certain New York City Police Department Ford motor vehicle bearing plate number 5414.

7. That at all times hereinafter mentioned, the defendant FLEET SERVICES DIVISION, was a municipal corporation duly existing under and by virtue of the laws of the State of New York.

8. That at all times hereinafter mentioned, the defendant FLEET SERVICES DIVISION, was an entity doing business in the State of New York.

9. That at all times hereinafter mentioned, the defendant FLEET SERVICES DIVISION, was the owner of a certain New York City Police Department Ford motor vehicle bearing plate number 5414.

10. That at all times hereinafter mentioned, the defendant P.O. GALVIN FERGUSON (Shield No. unknown), operated said New York City Police Department motor vehicle bearing plate number 5414.

11. That at all times hereinafter mentioned, the defendant P.O. GALVIN FERGUSON (Shield No. unknown), operated said New York City Police Department motor vehicle bearing plate number 5414 with the permission and consent, express or implied, of the owner of said motor vehicle.

12. That at all times hereinafter mentioned, the defendant P.O. GALVIN FERGUSON

(Shield No. unknown), operated said New York City Police Department motor vehicle bearing plate number 5414 within the course and scope of his employment.

13. That at all times hereinafter mentioned, the defendant P.O. GALVIN FERGUSON (Shield No. unknown), operated said New York City Police Department motor vehicle bearing plate number 5414 within the course and scope of his employment for the defendant THE CITY OF NEW YORK.

14. That at all times hereinafter mentioned, the defendant P.O. GALVIN FERGUSON (Shield No. unknown), operated said New York City Police Department motor vehicle bearing plate number 5414 within the course and scope of his employment for the defendant THE NEW YORK CITY POLICE DEPARTMENT.

15. That at all times hereinafter mentioned, the defendant THE CITY OF NEW YORK, its servants, agents and/or employees maintained said New York City Police Department motor vehicle bearing plate number 5414.

16. That at all times hereinafter mentioned the defendant THE CITY OF NEW YORK, its servants, agents and/or employees managed said New York City Police Department motor vehicle bearing plate number 5414.

17. That at all times hereinafter mentioned, the defendant THE CITY OF NEW YORK, its servants, agents and/or employees controlled said New York City Police Department motor vehicle bearing plate number 5414.

18. That at all times hereinafter mentioned, the defendant THE NEW YORK CITY POLICE DEPARTMENT, its servants, agents and/or employees maintained said New York City Police Department motor vehicle bearing plate number 5414.

19. That at all times hereinafter mentioned the defendant THE NEW YORK CITY

POLICE DEPARTMENT, its servants, agents and/or employees managed said New York City Police Department motor vehicle bearing plate number 5414.

20. That at all times hereinafter mentioned, the defendant THE NEW YORK CITY POLICE DEPARTMENT, its servants, agents and/or employees controlled said New York City Police Department motor vehicle bearing plate number 5414.

21. That at all times hereinafter mentioned, the defendant FLEET SERVICES DIVISION, its servants, agents and/or employees maintained said New York City Police Department motor vehicle bearing plate number 5414.

22. That at all times hereinafter mentioned the defendant FLEET SERVICES DIVISION, its servants, agents and/or employees managed said New York City Police Department motor vehicle bearing plate number 5414.

23. That at all times hereinafter mentioned, the defendant FLEET SERVICES DIVISION, its servants, agents and/or employees controlled said New York City Police Department motor vehicle bearing plate number 5414.

24. That at all times hereinafter mentioned, the defendant P.O. GALVIN FERGUSON (Shield No. unknown), maintained said New York City Police Department motor vehicle bearing plate number 5414.

25. That at all times hereinafter mentioned, the defendant P.O. GALVIN FERGUSON (Shield No. unknown), managed said New York City Police Department motor vehicle bearing plate number 5414.

26. That at all times hereinafter mentioned, the defendant P.O. GALVIN FERGUSON (Shield No. unknown), controlled said New York City Police Department motor vehicle bearing plate number 5414.

27. That at all times hereinafter mentioned, the defendant, HUB TRUCK RENTAL CORP., was a domestic corporation duly existing under and by virtue of the laws of the State of New York.

28. That at all times hereinafter mentioned, the defendant, HUB TRUCK RENTAL CORP., was a foreign corporation duly existing under and by virtue of the laws of the State of New York.

29. That at all times hereinafter mentioned, the defendant, HUB TRUCK RENTAL CORP., was a corporation duly authorized to conduct business in the County of Bronx, City and State of New York.

30. That at all times hereinafter mentioned, the defendant, HUB TRUCK RENTAL CORP., was a corporation doing business in the State of New York.

31. That at all times hereinafter mentioned, the defendant, HUB TRUCK RENTAL CORP., maintained its principal place of business at 94 Gazza Blvd., Farmingdale, New York.

32. That at all times mentioned herein, the defendant, CHARLES SINGLETON, was and still is a resident of the County of Kings, City and State of New York.

33. That at all times hereinafter mentioned, the defendant, HUB TRUCK RENTAL CORP., was the owner of a 2008 motor vehicle bearing New York State plate number: 16851JZ.

34. That at all times hereinafter mentioned, the defendant, HUB TRUCK RENTAL CORP., maintained said motor vehicle bearing New York State plate number: 16851JZ.

35. That at all times hereinafter mentioned, the defendant, HUB TRUCK RENTAL CORP., managed said motor vehicle bearing New York State plate number: 16851JZ.

36. That at all times hereinafter mentioned, the defendant, HUB TRUCK RENTAL

CORP., controlled said motor vehicle bearing New York State plate number: 16851JZ.

37. That at all times hereinafter mentioned, the defendant, CHARLES SINGLETON, was the operator of said motor vehicle bearing New York State plate number: 16851JZ.

38. That at all times hereinafter mentioned, the defendant, CHARLES SINGLETON, operated said motor vehicle New York State plate number: 16851JZ with the permission and consent, expressed or implied, of the owner of said motor vehicle.

39. That at all times hereinafter mentioned, the defendant, CHARLES SINGLETON, was the owner of a 2008 motor vehicle bearing New York State plate number: 16851JZ.

40. That at all times hereinafter mentioned, the defendant CHARLES SINGLETON, maintained said motor vehicle bearing New York State plate number: 16851JZ.

41. That at all times hereinafter mentioned, the defendant, CHARLES SINGLETON, managed said motor vehicle bearing New York State plate number: 16851JZ.

42. That at all times hereinafter mentioned, the defendant, CHARLES SINGLETON, controlled said motor vehicle bearing New York State plate number: 16851JZ.

43. That at all times hereinafter mentioned, the roadways located in the vicinity of Melrose Avenue and East 163rd Street, in the County of Bronx, City and State of New York were public roadways and thoroughfares in common use by the residents of the State of New York and others.

44. That at all times hereinafter mentioned, the plaintiff MARIA CINTRON-FALCON, was a passenger in the Ford motor vehicle bearing New York State plate number: 5414.

45. That on February 5, 2010, the defendant P.O. GALVIN FERGUSON (shield number: unknown), was operating his motor vehicle over and along the public roadways located in the

vicinity of Melrose Avenue and East 163rd Street, in the County of Bronx, City and State of New York.

46. That on February 5, 2010, the defendant, CHARLES SINGLETON, was operating said aforementioned motor vehicle on the public roadway in the vicinity of Melrose Avenue and East 163rd Street, in the County of Bronx, City and State of New York.

47. That on February 5, 2010, the aforementioned motor vehicle of the defendants were in contact with each other.

48. That on February 5, 2010, the said motor vehicle of the defendants were in contact upon Melrose Avenue and East 163rd Street, in the County of Bronx, City and State of New York.

49. That by reason of the foregoing, the plaintiff was injured.

50. That the foregoing accident and the resulting injuries to the plaintiff were caused solely by reason of the carelessness, negligence, reckless, wanton, and willful disregard on the part of the defendants, and without any negligence on the part of the plaintiff contributing thereto.

51. That by reason of the foregoing, this plaintiff was severely injured and damaged, rendered sick, sore, lame and disabled, sustained severe nervous shock and mental anguish, great physical pain and emotional upset, some of which injuries are permanent in nature and duration, and plaintiff will be permanently caused to suffer pain, inconvenience and other effects of such injuries; plaintiff incurred and in the future will necessarily incur further hospital and/or medical expenses in an effort to be cured of said injuries; and plaintiff has suffered and/or in the future will necessarily suffer additional loss of time and earnings from employment; and plaintiff will be unable to pursue the usual duties with the same degree of efficiency as prior to this accident,

all to plaintiff's great damage.

52. That as a result of the foregoing, this plaintiff suffered a serious injury as defined by Section §5102(d) of the Insurance Law of the State of New York.

53. That plaintiff is a covered person as defined by Section §5102(j) of the Insurance Law of the State of New York.

54. That by reason thereof, plaintiff is entitled to recover for non-economic loss and for such economic losses as are not included within the definition of 'basic economic loss' as set forth in Section §5102(a) of the Insurance Law of the State of New York.

55. That by reason thereof, plaintiff is entitled to recover for non-economic loss and for all economic losses sustained.

56. That this action falls within one or more of the exceptions set forth in C.P.L.R. 1602.

57. Pursuant to CPLR Section §1602(2)(iv), defendants are jointly and severally liable for all of plaintiff's damages, including but not limited to plaintiff's non-economic loss, irrespective of the provisions of the CPLR Section §1601, by reason of the fact that defendants owed the plaintiff a non-delegable duty of care.

58. Pursuant to CPLR Section §1602(7), defendants are jointly and severally liable for all of plaintiff's damages, including but not limited to plaintiff's non-economic loss, irrespective of the provisions of the CPLR Section §1601, by reason of the fact that defendants acted with reckless disregard of the safety of others.

59. Pursuant to CPLR Section §1602(6), defendants are jointly and severally liable for all of plaintiff's damages, including but not limited to plaintiff's non-economic loss, irrespective of the provisions of the CPLR Section §1601, by reason of the fact that defendants should be held liable by reason of defendants' use, ownership or operation of a motor vehicle.

60. Pursuant to CPLR Section §1602(2)(iv), the defendant owner is jointly and severally liable for all of plaintiff's damages, including but not limited to plaintiff's non-economic loss, irrespective of the provisions of the CPLR Section §1601, by reason of the fact that said defendant is vicariously liable for the negligent acts and omissions of the defendant operator of said vehicle.

61. That by reason of the foregoing, the plaintiff was injured.

62. That the foregoing accident and the resulting injuries to the plaintiff were caused solely by reason of the carelessness, negligence, wanton and willful disregard on the part of the defendants, and without any negligence on the part of the plaintiff contributing thereto.

63. That heretofore, and on/or about March 9, 2010 and within 90 days after the claim served upon arose, the plaintiff caused a Notice of Claim, in writing, sworn to by the plaintiff containing the name and post office address of the plaintiff and plaintiff's attorney, the nature of the claim, the time when, the place where and the manner by which the claim arose, the items of damage and the injuries claimed to have been sustained, to be served upon the defendants THE CITY OF NEW YORK and THE NEW YORK CITY POLICE DEPARTMENT, by delivering a copy thereof to the person designated by law as a person to whom such claims may be served and that on July 6, 2010 a 50-h Hearing was held.

64. That more than thirty (30) days have elapsed since the aforesaid Notice of Claim was served on the said defendant.

65. That the said defendant was negligent and has refused and neglected to adjust, settle and pay the same.

66. That this claim has been commenced and this action has been started within one year and ninety days after the happening of the event upon which the claim is based.

67. That all conditions and requirements precedent to the commencement of this action have been complied with.

68. That by reason of the foregoing, plaintiff has been damaged in an amount which exceeds the monetary jurisdictional limits of any and all lower Courts which would otherwise have jurisdiction herein, in an amount to be determined upon the trial of this action.

AS AND FOR A SECOND CAUSE OF ACTION

69. That plaintiff repeats, reiterates and re-alleges each and every allegation as contained in the First Cause of Action of the within Complaint with the same force and effect as though each were more fully set forth at length herein.

70. That at all times herein mentioned, it was the duty of the defendants, their servants, agents and/or employees to select and screen for hiring for retention or discharge as employees operating motor vehicles, those who are not fit, suitable, properly trained and instructed, constituting a potential menace, hazard or danger to the public or otherwise, those with unsuitable propensities and those with emotional, physical, psychological and/or physiological traits or characteristics or unsuitable or unstable or contraindicated for such employment.

71. That at all times herein mentioned, it was the duty of the defendants, their servants, agents and/or employees to train, discipline, supervise, promulgate and put into effect appropriate rules applicable to the duties, activities and behaviors of its servants, agents, employees and/or personnel operating motor vehicles in the course and scope of employment for said defendant.

72. That by reason of the negligence and lack of supervision of the said defendants in its hiring, monitoring and retention of said employee with knowledge of the unsuitable,

incompetence and unfitness to act and serve and unfitness to continue to act and serve as an employee operating said vehicle by reason of the defendant's breach of its duties, the plaintiff was caused to suffer severe injuries and damage, without fault or want of care on the part of the plaintiff in any way contributing thereto, thereby causing plaintiff extreme physical, mental and emotional illness and distress, as well as severe physical, mental and emotional injuries which are permanent in nature and duration.

73. That by reason of the foregoing, plaintiff has been damaged in an amount which exceeds the monetary jurisdictional limits of any and all lower Courts which would otherwise have jurisdiction herein, in an amount to be determined upon the trial of this action.

AS AND FOR A THIRD CAUSE OF ACTION

74. That plaintiff repeats, reiterates and re-alleges each and every allegation as contained in the First and Second Causes of Action of the within Complaint with the same force and effect as though each were more fully set forth at length herein.

75. That at all times herein mentioned, it was the duty of the defendants, their servants, agents and/or employees to supervise and entrust the use of their motor vehicles to suitable, competent, qualified, experienced, trained, diligent and adequate persons.

76. That at all times herein mentioned, it was the duty of the defendants, their servants, agents and/or employees to properly and adequately supervise and ensure that their said motor vehicle was entrusted, for use and operation as a vehicle, to persons, who were fit, suitable, properly trained and instructed.

77. That at all times herein mentioned, it was the duty of the defendants, their servants, agents and/or employees to properly and adequately supervise and ensure that their said motor vehicle was not entrusted, for use and operation as a vehicle, to persons, who constituted a

potential menace, hazard or danger to the public or otherwise, those with unsuitable propensities and those with emotional, physical, psychological and/or physiological traits or characteristics or unsuitable or unstable or contraindicated to safely operate such vehicle.

78. That by reason of the negligence of the said defendant in negligently supervising and entrusting said motor vehicle to said operator, the plaintiff was caused to suffer severe injuries and damage, without fault or want of care on the part of the plaintiff in any way contributing thereto, thereby causing plaintiff extreme physical, mental and emotional illness and distress, as well as severe physical, mental and emotional injuries which are permanent in nature and duration.

79. That by reason of the foregoing, plaintiff has been damaged in an amount which exceeds the monetary jurisdictional limits of any and all lower Courts which would otherwise have jurisdiction herein, in an amount to be determined upon the trial of this action.

WHEREFORE, plaintiff demands judgment in the First, Second and Third Causes of Action against the Defendants in amounts which exceed the monetary jurisdictional limits of any and all lower Courts which would otherwise have jurisdiction herein, in amounts to be determined upon the trial of this action, together with the costs and disbursements of this action, and with interest from the date of this accident.

Dated: New York, New York
July 9, 2010


ALISON R. KEENAN

ATTORNEY VERIFICATION

ALISON KEENAN, ESQ., an attorney duly admitted to practice law in the Courts of the State of New York, shows:

I am the attorney for the plaintiff in the within action and have read the foregoing SUMMONS AND VERIFIED COMPLAINT the contents thereof; the same is true upon information and belief.

This verification is made by this affirmant and not by said plaintiff because said plaintiff reside(s) in a County other than the County wherein your affirmant maintains her office.

The grounds of affirmant's knowledge and belief are as follows: Conference with clients and notes and records contained in the file maintained in the regular course of business.

The undersigned affirms that the foregoing statements are true under the penalties of perjury.


ALISON KEENAN

Index No.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

MARIA CINTRON- FALCON,

Plaintiff,

-against-

THE CITY OF NEW YORK, THE NEW YORK CITY POLICE DEPARTMENT, P.O.
GALVIN FERGUSON (Shield No. unknown), FLEET SERVICES DIVISION, HUB TRUCK
RENTAL CORP. AND CHARLES SINGLETON,

Defendants.

SUMMONS AND VERIFIED COMPLAINT

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